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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,830	01/22/2002	Heinrich Lang	LMX-69-CON	6532

7590 01/18/2007  
McNAIR LAW FIRM  
P O BOX 10827  
GREENVILLE, SC 29603-0827

EXAMINER
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SHAFFER, RICKY D

ART UNIT	PAPER NUMBER
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2872

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/053,830	Applicant(s) LANG ET AL.	
	Examiner <i>R. SHAFER</i> <del>DEBORAH</del>	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 & 18-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: ____.   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Status of Application***

Applicant's Petition on June 03, 2004, filed under 35 C.F.R. §§ 1.129, 1.113 and 1.181, which argues the restriction, holding of election and traversing the final rejection of 3/16/04, has been treated as a Request for Reconsideration. As such, the arguments have been fully considered and are persuasive. Therefore, the final office action and concurrent restriction have been withdrawn and subsequent action on claims 1 and 18-25 follows.

### ***Rejection under 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sillmann (DE 3207925).

Regarding claim 1, Sillmann discloses a rearview mirror assembly comprising a support structure having a first part (9) and a second part (19) for mounting the mirror assembly to a vehicle, wherein the second part of the support structure is disposed on a support arm (33) having a mirror (7) and a key activated locking mechanism (22 and 25-27) including a key cylinder (25,26) and a latch member (22) disposed on the support structure for selectively

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locking together the first and second parts of the support structure, note figures 8b and 9 along with associated description thereof, except for the key activated locking mechanism of the locking mechanism being disposed on the first part of the support structure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange and/or reverse the location of locking mechanism of Sillmann such that the key activated locking mechanism including a key cylinder (25,26) and a latch member (22) is positioned on the first part of the support structure, instead of being located the second part of support structure, in order to increase stability, since it has been held that rearranging parts and/or the mere reversal of parts of an invention involves only routine skill in the art. Note In re Japikse, 86 U.S.P.Q. 70; In re Einstein, 8 U.S.P.Q. 167; and In re Kuhle, 188 U.S.P.Q. 7.

Regarding claims 18-24, Sillmann further discloses adjustment mechanism 70 and its internal structures (see fig 7), as well as a support structure arrangement (3) which is fit into a slot/recess 12. Absent any showing of criticality, the choice of a clamping wedge-like structure or snap-in structure with an associated receiving detent or receiving arrangement for accepting the support at a right angle would have been obvious to one of ordinary skill in the art as functionally recognized equivalents. Further, the support acts as a cover for the locking system. See figs. 1, 3, 5, 8a and 8b).

As to claim 25 pertaining to the limitation that the latch member is hook-shaped, it is well known to use hook-shaped latches in an analogous art of locking mechanisms for the purpose of preventing unauthorized entry/removal.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the latch member of Sillmann to include a hook, as is commonly used and employed in lock art, in order to increase the strength of the locking mechanism.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A3 terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,554,436. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application (10/053,830) discloses no additional invention or discovery other than

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what was already claimed and patented in U.S. Patent 6,554,436 or what would have been obvious to one of ordinary skill in the art at the time the invention was made.

U.S. Patent (>436) discloses a rearview mirror assembly for a vehicle comprising a support structure including a first part (clamp receptacle) and a second part (insertable component) for mounting the mirror assembly to a vehicle, wherein the second part of the support structure is disposed on a support arm having a mirror and a key activated locking mechanism disposed on the support structure for selectively locking together the first and second parts of the support structure, except for the key activated locking mechanism includes a key cylinder and a hook shaped latch member.

It is well known to use key activated locking mechanisms having a key cylinder and a hook shaped latch member in an analogous art of locking mechanisms for the purpose of preventing unauthorized entry/removal.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the key activated locking mechanism of U.S. Patent (>436) to include a typical key cylinder and hook latch member, as is commonly used and employed in the lock art, in order to prevent unauthorized removal of the support arm and mirror.

Claims 1 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,352,231. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application (10/053,830) discloses no additional invention or discovery other than what was already claimed and patented in U.S. Patent 6,352,231 or what would have been obvious to one of ordinary skill in the art at the time the invention was made.

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U.S. Patent (>231) discloses a rearview mirror assembly for a vehicle comprising a support structure including a first part (clamp reception fixture) and a second part (insertable component) for mounting the mirror assembly to a vehicle, wherein the second part of the support structure serves as a support arm for a rearview mirror and a locking device having a locking cylinder and a detent hook disposed on the support structure for selectively locking together the first and second parts of the support structure, except for the locking device includes a key activated locking mechanism.

It is well known to use key activated locking mechanisms having a key cylinder and a hook shaped latch member in an analogous art of locking mechanisms for the purpose of preventing unauthorized entry/removal.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the locking device of U.S. Patent (>231) to include a typical key activated locking mechanism, as is commonly used and employed in the lock art, in order to prevent unauthorized removal of the support arm and mirror.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to R. D. Shafer at telephone number (571) 272-2320.

RDS *RDS*

7 Jan 1007



**DREW A. DUNN**  
**SUPERVISORY PATENT EXAMINER**